

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:)	
)	
PEDRO BURGESS,)	
)	
Complainant,)	
)	
and)	CHARGE NO: 2001CF0698
)	EEOC NO: 21BA03350
)	ALS NO: 11821
COUNCIL FOR JEWISH ELDERLY f/k/a)	
LIBERMAN RETIREMENT,)	
)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

This matter comes before me on Respondent's Motion for Summary Decision filed on September 25, 2003. By Order dated April 7, 2004, this case was transferred to me for ruling. The Order gave our *pro se* Complainant until May 21, 2004 to file a response to the motion, but he failed to do so. Instead, in correspondence, Complainant requested legal assistance from the Commission. Respondent filed a reply to the correspondence on June 20, 2004. Thus, the motion is ready for a decision.

Contentions of the Parties

The Complaint in this matter alleges that Complainant was terminated from his job at the Liberman Retirement Home in retaliation for complaining to management that he was subjected to racial slurs by a co-worker. However, Respondent now moves to dismiss this cause of action because there exists no triable issue of fact and because Complainant has failed to respond to the motion. Complainant's position is not known.

Findings of Fact

The following facts were derived from the record and are not the result of any credibility determination:

1. Complainant filed a charge of race discrimination and retaliation with the Department of Human Rights on December 22, 2000.
2. On July 5, 2002, the Department of Human Rights filed a Complaint of Civil Rights Violation on Complainant's behalf.
3. On September 25, 2003, Respondent filed a Motion for Summary Decision with affidavits and exhibits attached and properly served the motion on both the complainant and the Department of Human Rights.
4. In the motion, Respondent argued that Complainant could not establish a *prima facie* case of retaliation. Complainant did not respond to the motion.
5. Six months later, in a letter dated March 25, 2004, Complainant essentially requested that the Commission provide him with the status of his case.
6. On April 7, 2004, Chief Administrative Law Judge Mary Kennedy entered an Order which indicated that Respondent had filed a Motion for Summary Decision on September 25, 2003 and that Complainant had never responded to the motion. The Order also provided Complainant an additional 45 days to respond to the motion.
7. On May 10, 2004, Complainant sent another letter to the Commission requesting assistance with and resolution of his case. Again, Complaint did not address or respond to the pending motion.

Conclusions of Law

1. A party has five days or an extension thereof to respond to a motion, but not to exceed forty-five days. **56 III. Admin. Code § 5300.730(b)**. An absence of a response shall be deemed the absence of an objection to the motion.
2. Complainant has unreasonably delayed the proceedings in this case by failing to respond to Respondent's motion for Summary Decision.
3. Because Complainant has failed to respond to the Motion for Summary Decision, no genuine issue of material fact exists between the parties in this case.

Determination

Respondent's Motion for Summary Decision should be granted and this case dismissed with prejudice due to Complainant's failure to file a response to the pending dispositive motion leaving no genuine issue of material fact between the parties.

Discussion

The Illinois Human Rights Act provides that a party is entitled to a summary decision "if the pleadings and affidavits...show that there is no genuine issue as to any material fact and that the moving party is entitled to a recommended order as a matter of law. " **775 ILCS 5/8-106.1**. That provision of the Act mirrors the well established procedure followed in the Illinois Circuit Courts. In ruling on a motion for summary decision, it is incumbent on an administrative law judge to consider all of the pleadings, affidavits and exhibits and to strictly construe them against the movant, so as to leave no doubt but that the summary decision is proper. See, **Rios and Terry Farms**, ___ Ill. HRC. Rep.__(1996CA1659, December 7, 1998). Although Complainant need not prove his case to overcome the motion, he must submit sworn evidence to establish a factual basis that would entitle him to a decision under the applicable law. **Rios** slip op at 8.

Here, Complainant has neither responded to the motion nor provided any sworn evidence to refute the statements contained in the affidavits attached to Respondent's motion. The Commission has previously addressed this very circumstance where a *pro se* Complainant fails to respond to a dispositive motion after being provided ample time to do so. As in the instant case, the *pro se* Complainant in, **Jones and Burlington Northern Railroad**, 25 Ill. HRC. Rep. 101(1986), contacted the Commission by letter regarding his case. In the letter the complainant asked the Commission not to dismiss his case because he wanted to "fight Respondent's motion." **Jones** at 106. The Administrative Law Judge presiding over his case informed the Complainant that the letter was insufficient to form a response to the dispositive motion and gave him

additional time to respond. After a period of time when the Commission “received no written argument in opposition to the motion” and after Respondent’s repeated inquiries about the status of the motion, the Administrative Law Judge recommended the case be dismissed for Complainant’s want of prosecution of his case. Id at 107.

In the present case, our Complainant also corresponded with the Commission by letter twice after Respondent filed its Motion for Summary Decision, but never referenced Respondent’s pending motion. In fact, Complainant contends he has received nothing either from the Commission or Respondent, but the record proves otherwise. As in Jones, the Administrative Law Judge presiding over this case gave Complainant an additional amount of time to respond to the motion, which he also disregarded thus leaving the facts and arguments in Respondent’s motion uncontraverted. Under those circumstances, the Commission has held that it “will not search the record to find reasons to deny a motion. If a motion appears valid on its face, and the other side cannot tell us why the motion should not be granted, we will grant the motion.” Jones, 25 Ill. HRC. Rep. 101(1986). Respondent’s motion on its face establishes that Complainant cannot prove a *prima facie* case of discrimination, thus Complainant leaves the Commission no choice but to dismiss this case.

Determination

Based on the above findings of fact and conclusions of law, I recommend that Respondent’s Motion for Summary Decision be granted and that the underlying Complaint be dismissed with prejudice.

ILLINOIS HUMAN RIGHTS COMMISSION

KELLI L. GIDCUMB
Administrative Law Judge
Administrative Law Section

ENTERED THE 26TH DAY OF AUGUST, 2004.